THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

APPEAL SUIT Nos.803, 804, 805, 820 AND 991 OF 1997
AND
TRANSFER APPEAL SUIT Nos.289 AND 290 OF 2001

COMMON JUDGMENT:

All these appeals arise out of a common judgment passed by the Principal Subordinate Judge, Eluru, in O.S.No.191 of 1987 was filed by the plaintiff against the first defendant and also the other defendant Nos. 2 to 7 for rendition of accounts.

2. The parties are referred to as arrayed in O.S.No.191 of 1987 for the purpose of convenience.

3. According to the case of the plaintiff, the plaintiff along with defendant Nos.2 to 7 was doing the business in the name and style of the 1st defendant and the partnership agreement was entered into and the lease of the rice mill was taken from 16.03.1983 to 30.11.1985 on yearly rent of Rs.20,000/-. The plaintiff was having a share of 0-25 ps., whereas defendant Nos.2 to 7 were having share of 0-75 ps. each. Defendant Nos. 2 and 3 are said to be the Managing Partners of the firm. The business of the firm has been stopped from 01.04.1985, and defendant Nos. 2 to 7 did not render the accounts in spite of legal notice. Therefore, the suit was filed for rendition of the accounts.

4. Defendant Nos.2 to 7 have filed a written statement admitting the partnership, but pleading that on 12.07.1985 at the house of one Subbaraju, there was meeting of all the partners and elders and one Ch. Rama Rao, the accountant, produced the accounts and consequently a settlement was arrived at and the plaintiff was found due a sum of Rs.3,00,000/- to the remaining

partners and as the plaintiff has expressed his inability to pay the amount, he has executed five promissory notes of Rs.25,000/- each and one promissory note for Rs.37,500/- in favour of the remaining partners separately as per the advice of the elders. It was also further alleged that the plaintiff has caused damages to the account books, on 16.07.1985 by putting them to fire and a police report was given and consequently on the settlement and in view of the fact that the plaintiff has executed six promissory notes, the said complaint has been withdrawn.

5. Basing on the six promissory notes obtained by defendant Nos.2 to 7, they have filed the other suits. The plaintiff in O.S.No.191 of 1987 contended that the remaining partners used to obtain his signatures on blank stamped papers during the course of the partnership business stating that they were required for obtaining permits. Therefore, he did not execute the said promissory notes and they are not supported by consideration and therefore he is not liable for payment of the claim.

6. All these suits were clubbed together and evidence was differently recorded in all the suits. But, however, a common judgment was pronounced by the Court below. The suit O.S.No.191 of 1987 was decreed, whereas the other suits with regard to the promissory notes were dismissed. Aggrieved by the said judgment, the defendants in O.S.No.191 of 1987 and the plaintiffs in the other suits have preferred the respective appeals.

7. The points that arise for consideration are:

1) Whether the settlement of the accounts pleaded on 12.07.1985 by the defendants and the consequential execution of the promissory notes

on 31.07.1985 is true?

2) Whether the findings of the Court below in holding that the promissory notes are not proved is based on proper appreciation of the evidence?

3) Whether the decree for rendition of the accounts passed by the Court below is legal and sustainable?

8. There is no dispute about the fact that the plaintiff and the defendant did business in rice mill and having started in the year, 1983, and the business was stopped by 30.06.1985. The question before the Court is whether there was a settlement of the accounts as contended by the defendants and as to whether at the time of settlement, the accounts were looked into and the plaintiff has executed six promissory notes under which he has undertaken to pay money to the defendants. So far as, the execution of these promissory notes is concerned, the learned Judge at the initial stage was inclined to accept the evidence of the persons associated with the execution of the promissory notes and also found that the plaintiff is not so innocent to have contributed the signatures to the promissory notes. But, however, the learned Judge was not inclined to accept the contention of the defendants about the settlement of accounts on 12.07.1985 and also consequential execution of the promissory notes on 31.07.1985, for the reason that Ex.A1-legal notice has been issued by the plaintiff on 22.12.1985 and reply was given under Ex.A2 dated 30.12.1985, and in that the factum of the settlement and execution of the promissory notes were not pleaded.

9. In order to appreciate the above findings of the Court, it is useful to extract Para Nos.2 and 3 of Ex.A.2.

> "2. It is true that my clients and your client entered into a partnership and carried on business of rice milling operations under the name and style of S.R.R. Veera Ramakrishnamraju as contractors of Sri Devi Modern Rice, Oils and Flours Mills, Kamavarapukota as alleged but it is not correct to say that the business was closed without the knowledge and consent of your client.
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> 3. As the firm incurred a loss of nearly five lakhs of rupees, the business was wound up on 30.06.1985 pending dissolution of the partnership and settlement of accounts. The loss has been arrived at on 12.07.1985 at the house of the father of our clients, Sri Subbaraju, at Eluru in the presence of all the partners including your client. In addition to the loss, your client is indebted to the firm to an extent of Rs.1,75,000/-. Consequent on the tentative arrangement reached between the partners *inter se* including your client, your client expressed his willingness to make good the sum of Rs.3,00,000/- by providing security of immovable property as he was not in a position to pay it in cash immediately".

10. As can be seen from the legal notice, the fact that the business was stopped on 30.06.1985 is not in dispute. The loss was said to have been arrived at 12.07.1985, tune of nearly Rs.5,00,000/-. It was only stated that the plaintiff has agreed to make good a sum of Rs.3,00,000/- including the sum of Rs.1,75,000/- which he is due.

11. If really, there was a final settlement of the accounts and the plaintiff was found due a sum of Rs.3,00,000/- and executed the promissory notes on 31.07.1985, then, it is very important fact which in normal course of events in a legal notice would not have been failed to be mentioned. On the contrary, in para 3 what was stated was pending resolution of the partnership firm and settlement of the accounts the business was stopped. Evidently, for the alleged settlement arrived at on 12.07.1985 or 31.07.1985,

when the promissory notes were said to have been executed, no document has been executed between all the partners about the nature of the settlement. The settlement is said to have been taken place at the house of Subbaraju, who is the father of the defendants and he was not examined in the lower Court to prove the above fact and as per the written statement, the accountant-Ch. Rama Rao has looked into the accounts and also he was not examined before the Court below. These are the most important witnesses who would have thrown light about the nature of the transaction that has taken place either on 12.07.1985 or 31.07.1985. In the absence of their evidence and in the absence of the fact of the complete settlement of the accounts and execution of six promissory notes in Ex.A2, then naturally the presumption with regard to the promissory notes is rebutted by the circumstances and it is difficult to believe that the promissory notes have come into existence in the manner as pleaded by the defendants. Therefore, even if the Court below has initially inclined to accept the execution of the promissory notes, but the material evidence on record clearly goes to show that the inclination could not have been there and even otherwise the manner in which the promissory notes were said to have been executed is not probable from the circumstances. Therefore, I do not find any error in the appreciation of the evidence of the Court below particularly keeping in view the Ex.A.2 which is material document.

12. The learned counsel for the appellant strongly contended that Ex.A2 is not a pleading and the absence of the mentioning of the promissory notes is not vital. But the fact remains an essential fact as great bearing about the determination of the

rights between the parties cannot be allowed to be missed in the reply notice and in fact the claim of the parties is dependent on this particular fact. Therefore, the omission of such a fact in the reply notice can only lead to inference that the fact did not exist when the reply was given. Therefore, in view of the above circumstances, the dismissal of the suits by the Court below so far as the promissory notes is concerned cannot be found fault.

13. Even otherwise, the appellants will not be put to loss to establish their claim since the decree for dissolution of the partnership has been passed and in course of enquiry there is every right and opportunity for them to adduce evidence about the indebtedness of the plaintiff to the partners of the firm and the Court can look into the above aspects and determine the rights of the parties. If the account books are not available, it is for the Court and the Commissioner appointed by the Court to look into the other modes of determining the accounts between the parties and in these appeals such an issue cannot be decided and therefore, there are absolutely no merits in the appeals and all the appeals are liable to be dismissed.

14. Accordingly, all the appeals are dismissed. Each party shall bear their own costs. Miscellaneous Petitions, if any, pending in these appeals shall stand closed.

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JUSTICE N.R.L. NAGESWARA RAO

Dated: 06.03.2013
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